Petition not printed

No. 350

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CHARLES ELMORE CROPLEY

In the Supreme Court of the United States

October Term, 1950

TOMAS ESQUIVEL, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 260

JOHN BRUSZEWSKI, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania is reported at 88 F. Supp. 962. The opinion of the Court of Appeals for the Third Circuit is reported at 181 F. 2d 419.[1]

JURISDICTION

The judgment of the court of appeals was entered on April 11, 1950. A petition for rehear-

[1] No record references are available since petitioner has filed the record in typewritten form without any continuous pagination.

ing was denied on May 24, 1950. The petition for a writ of certiorari was filed on August 22, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether, after a full and complete trial where judgment on the merits is entered against the plaintiff and in favor of the defendant, that same plaintiff may relitigate the identical issues of liability on the same set of facts in another suit against a second defendant who was under an obligation to indemnify the first defendant for any damages which the plaintiff might have recovered in his first action.

2. Whether the warranty of seaworthiness applies to make a shipowner absolutely liable for personal injuries sustained by an employee of an independent contractor from a broken boom which he was engaged to remove.

STATUTE INVOLVED

Section 2 of the Suits in Admiralty Act (Act of March 9, 1920, 41 Stat. 525, 46 U. S. C. 741) is set forth in the Appendix, *infra*, pp. 14-15.

STATEMENT

In November 1943, the *S. S. George Read*, a vessel owned and operated by the United States and husbanded by the Isthmian Steamship Company pursuant to a General Agency Agreement, was docked at a pier in Philadelphia. The United

States contracted with the B. H. Sobelman Company, a stevedoring contractor, for the loading of the vessel. On November 9, 1943, while the vessel was being loaded by stevedores employed by the Sobelman Company, a boom on the vessel was broken. The superintendent of stevedores for the Sobelman Company procured a gang of men to remove and repair the broken boom. Petitioner was one of the gang who reported on the vessel for that job, which was the only job he, with the rest of the gang, were called upon to do. *Bruszewski v. Isthmian S. S. Co.*, 66 F. Supp. 210, 213. As the broken boom was being raised for the purpose of removing it, petitioner walked across the deck underneath the boom and was struck on the head by a block which had come loose from the ropes by which it was attached to the boom. *Bruszewski v. Isthmian S. S. Co.*, 66 F. Supp. 210, 211; *Bruszewski v. U. S. War Shipping Administration*, 88 F. Supp. 962, 963.

For the injuries so sustained, petitioner, on March 6, 1944, filed a civil action against Isthmian in the United States District Court for the Eastern District of Pennsylvania alleging negligence and unseaworthiness of the vessel. Isthmian denied ownership and control of the vessel and denied generally all of the allegations concerning its negligence and the unseaworthiness of the vessel. After all the evidence was in, the district court decided that there was no evidence of negligence on the part of Isthmian as owner *pro hac vice* and

that the work in which petitioner was engaged was not a maritime service and therefore not covered by the warranty of seaworthiness. See 66 F. Supp. 210, 213. He accordingly directed the jury to return a verdict for Isthmian. The Court of Appeals for the Third Circuit affirmed on the same grounds, holding that there had been a failure to prove negligence and that the doctrine of unseaworthiness was non-applicable. These holdings, that court pointed out, made it "unnecessary for us to pass upon the contentions that the warranty of unseaworthiness cannot be asserted against a general agent". 163 F. 2d 720, 722. Certiorari was denied by this Court on February 2, 1948. 333 U. S. 828.

Meanwhile, on June 28, 1945, shortly after the trial court had directed the verdict in favor of Isthmian, petitioner brought the instant libel against the United States. Petitioner again based his claim for damages for his personal injuries on negligence and unseaworthiness of the vessel.[2] The United States filed a general denial. In addition, it filed a motion to dismiss on the ground that the prior adjudication in favor of Isthmian, its General Agent, bars this subsequent suit against the United States. This motion was, by agreement

[2] Comparisons of paragraphs 4 through 8 of the complaint filed against Isthmian, and paragraphs 4 through 8 of the libel filed against the United States, show that these operative portions of the complaint and libel are identical. (See pp. 1-3 of the complaint in the *Isthmian* record and pp. 3-6 of the libel against the United States).

of the court and counsel, heard on the entire record in the *Isthmian* case, and was granted by the district court. It ruled that in the prior civil action petitioner had failed to prove that the General Agent was negligent and that a judgment had been entered against petitioner on the merits on that aspect of the case. With respect to the issue of seaworthiness, the court pointed out that the United States had not warranted the seaworthiness of the defective boom and its tackle as to this particular plaintiff, and that the case of *Seas Shipping Company* v. *Sieracki*, 328 U. S. 85 is therefore inapplicable. 88 F. Supp. at 964. The court below affirmed, holding that in the present case the very party "against whom the first judgment was rendered [*i.e.*, petitioner] is to be bound in the subsequent action." Both the majority and concurring opinions found the relationships between the United States and the Isthmian Steamship Company sufficient to warrant application of *res judicata* against the same claimant who had twice asserted essentially the same claim against the two different defendants.

ARGUMENT

Petitioner, while recognizing the underlying purpose of *res judicata*—to put an end to litigation where the issues have already been fully contested and decided—advances an alleged lack of identity of parties and of cause of action as justification for non-applicability of that doctrine here. His other